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Craig D. Galli
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HAND DELIVERED

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03.04249
Utah Division of Solid and Hazardous Waste

December 30, 2003

Mr. Dennis R. Downs
Executive Secretary
Utah Solid and Hazardous Waste Control Board
Utah Department of Environmental Quality
288 North 1460 West
PO Box 144880
Salt Lake City, Utah 84114 - 4880

Re: *Comments on Proposed Warren Construction Class VI Commercial Landfill*

Dear Mr. Downs:

On behalf of Kapp Construction Co. ("Kapp Construction") and Kemp Development, Inc. ("Kemp Development"), please find the below and attached comments on the permit proposed by Warren Construction Services to construct and operate a Class VI commercial construction and demolition debris landfill (the "Proposed Landfill"). These comments are also submitted on behalf of a coalition of other companies and municipalities to be identified.[1]

Technical Comments

The technical comments on the Proposed Landfill, attached hereto as Exhibit A, were prepared by Michael Brehm, P.E. Mr. Brehm's Curriculum Vitae is attached hereto as Exhibit B. Mr. Brehm's report represents his preliminary assessment and review of the permit application given the incompleteness of the permit application and the time allowed in which to gather pertinent information.

Interests of Identified Coalition Members

Kapp Construction and Kemp Development have spent millions of dollars developing high quality commercial property in the vicinity of the Ogden-Hinckley Airport. Specifically, Kapp Construction developed an office park at 1595 West 3300 South, Ogden, Utah. The Proposed Landfill would be located at 1650 West 3300 South, Odgen, Utah, which is immediately adjacent to the Kapp property. Kemp Development is developing a forty-

[1] Given the timing of submission of these comments during the holidays, representatives of the other members of the coalition which opposes the Proposed Landfill could not be contacted to confirm that they join these comments. However, other coalition members who join these comments will be identified to the Executive Secretary in the coming weeks.

seven acre, $40,000,000 business air park called the Ogden Airport Gateway Center located at the south and north ends of the Ogden-Hinckley Airport. Kemp's plans call for numerous structures ranging from a balanced mix of premier hangars, class A office space, warehouses, a hotel, restaurants, upscale retail centers, and a commercial center for tenant businesses offering aerospace manufacturing, jet maintenance, repair, overhaul and support for local and regional corporate jets, business and traveling visitors.

Other companies have expended significant funds to develop commercial and industrial property in the vicinity which would be adversely affected from the Proposed Landfill. Project impacts include but are not limited to a reduction in property value, visual impacts and increased truck traffic. A recent newspaper article described the importance of maintaining quality development in the immediate vicinity of the Ogden-Hinckley Airport:

> *Regional and corporate jet travel is the highway for Fortune 500 companies into our community.... This is the first impression of Ogden they will get, so when executives come in on a $40 million jet and are considering moving their company to Ogden, we want them to feel like it's the type of community they can bring their businesses to.*

See Exhibit C.

Legal Deficiencies with Warren Construction Landfill Application

Airport Safety

The Proposed Landfill runs afoul of the "Solid Waste Facility Location Standards" promulgated pursuant to the Utah Solid and Hazardous Waste Act. The siting criteria state in relevant part:

> No new facility shall be located within: (v) ten thousand feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used by only piston–type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions.

Utah Admin. Code R315-302-1(2)(a)(v).

The Ogden-Hinckley Airport is certified as an FAA Part 139 General Aviation Airport which serves both turbojet aircraft and piston-type aircraft, including DC-9s, MD-80s and B-737/727 aircraft for cargo and charter operations, and hundreds of smaller piston aircraft. See Ogden City, Ogden-Hinckley Airport Description (attached hereto as Exhibit D). As indicated on maps accompanying the permit application, the site of the Proposed Landfill is located

directly north of the Ogden-Hinckley Airport and within 2000 feet of airport runways. Yet, the application provides no analysis of potential bird/aircraft collisions.

Furthermore, the FAA has issued two Advisory Circulars regarding the establishment of landfills near airports. The FAA has concluded that construction and demolition landfills are not considered "hazardous wildlife attractants" only if they "admit no putrescible-waste of any kind." FAA, AC 150/5200-33 at 5 (attached hereto as Exhibit E). "Putrescible-waste" means "solid waste which contains organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds." 40 C.F.R. § 257.3-8. The Proposed Landfill expressly contemplates the receipt of "yard waste" which will include putrescible waste.

The FAA has further concluded that gulls and waterfowl cause the majority of all "damaging strikes" on aircraft from birds. The Proposed Landfill is located near the Great Salt Lake, one of the most significant flyways in North America. There is no doubt that gulls and waterfowl will be attracted to the Proposed Landfill. The FAA recommends "a distance of 5 statute miles ... if the wildlife attractant may cause hazardous wildlife movement into or across the approach or departure airspace." FAA, AC 150/5200-33 at 1. Again, the permit application fails to consider the adverse impacts of the landfill on airport safety.

In addition, fugitive dust from the landfill operation can adversely affect operations of the Ogden-Hinckley Airport from a safety and an aesthetic perspective. Fugitive dust from the Proposed Landfill has not been adequately addressed.

Incompatible Land Use

The Proposed Landfill further violates the criterion applicable to incompatible uses which states in pertinent:

> No new facility shall be located within: (i) one-fourth mile of existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance.

Utah Admin. Code R315-302-1(2)(a)(iv).

The Proposed Landfill is located within several hundred feet of a permanent dwelling and several hundred yards of an industrial park, which constitutes an "incompatible structure" given the current and future planned development in the immediate vicinity of the Proposed Landfill. The permit application concedes that "[t]he current zoning on the proposed site is M1. We are in the process of getting a zoning change." See Permit Application, Part II, at 2. Thus, the current zoning restrictions do not allow a landfill at the site.

Site Ownership, Training, Markets and Compliance History

The application fails to adequately demonstrate that the proponent of the Proposed Landfill actually owns the entire site of the Proposed Landfill, as required by law. See Utah Admin. Code R315-310-3(c). Indeed, it appears from the permit application that the application does not currently own the property given that it states that "[p]roof of ownership will be supplied after land closing." See Permit Application, Part II, at 1.

Moreover, the permit application fails identify all individuals with direct or indirect ownership interest in the entity which will operate the Proposed Landfill, their "compliance history," Utah Code Ann. § 19-6-108(10)(c), and that they have received adequate "education and training for the safe and adequate handling of nonhazardous solid or hazardous waste." See Utah Admin. Code R315-310-9(d). Finally, no information has been submitted to demonstrate a proven market for the Proposed Landfill. Id. § R315-310-10(a).

Legal Sufficiency

Given the flaws in the permit application described above and in the report prepared by Michael Brehm, P.E., the Proposed Landfill does not and cannot pass even a cursory legal sufficiency review. Courts reviewing challenges to the permitting of proposed landfills which similarly violate siting criteria have denied permits to and enjoined the construction and/or operation of landfills. Sharp v. 251st Street Landfill, Inc., 925 P.2d 546 (Okla. 1996); Entzian v. Prince George's County, 360 A.2d 6 (Md. Ct. Spec. App. 1976); Indiana v. Klatte, 270 N.E.2d 872 (Ind. 1971); Birchwood Realty, Inc. v. Grant, 627 A.2d 827, 833-34 (R.I. 1993).

For the reasons stated above, Kapp Construction and Kemp Development respectfully request that the Executive Secretary of the Solid and Hazardous Waste Control Board deny the permit for the Proposed Landfill.

Sincerely,

Craig D. Galli

Attachments

cc: Gary Kapp, Kapp Construction
Mel Kemp, Kemp Development
Norm Ashton, Ogden City

This letter was received by the office of Dennis R. Downs, Utah Department of Environmental Quality.

_____ Date _____
Signature

3174624_1.DOC

EXHIBIT A

BREHM ENVIRONMENTAL LLC
1335 East Gilmer Drive - Salt Lake City, Utah 84105 / PH&FX: (801) 582 - 2310 / C: (801) 541 - 6602
MBrehmPE@BrehmEnvLLC.com / www.BrehmEnvLLC.com

SERVICES & QUALIFICATIONS

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- Remedial Strategies, Decision Analysis & Closure (LUST, RCRA, CERCLA)
- Regulatory Support, Compliance & Coordination
- Special Projects Execution
- On/Off-Premises, Contract Employee Services

Michael D Brehm, P.E.

M.S. Engineering, Hydrology & Water Resource Engineering — Utah State Univ. (1984)
B.S. Environmental Resource Management — Pennsylvania State University (1981)
B.S. Biology — Pennsylvania State University (1981)

Professional Registrations

Professional Engineer: Utah, Idaho, Pennsylvania

Professional History

• BREHM ENVIRONMENTAL LLC	Salt Lake City, Utah	3 / 00 - present
• CH2M HILL	Salt Lake City, Utah	1 / 95 - 3 / 00
• Terracon Consultants Western	Salt Lake City, Utah	2 / 92 - 1 / 95
• R.E. Wright Associates (SAIC)	Middletown, PA	4 / 84 - 2 / 92

Professional & Community Service

- Pennsylvania Assoc. of Environmental Professionals – Chrtr. Member, Dir. and President (1990 - 1991)
- Consulting Engineers Council of Utah (CECU) - Environmental Affairs Comm. Chair (1994 – 1996)
- Utah Div. of Facilities Constr. & Mgmt., Task Force on Env. Responsibility in Design (1996)
- Consulting Engineers Council of Utah - Board of Directors (CECU) (1998 – present)
- University of Utah Env. Engineering Graduate Program ABET Advisory Board (2000 - present)
- Governor's Council on Science & Technology - Appointed (2000 – present)
- Salt Lake County Sheriff's Search & Rescue Volunteer (2000 – present)
- Utah Dept. of Community & Econ. Dev. – Centers of Excellence Advisory Board (2000 – present)
- Salt Lake Vest Pocket Business Coalition (2001 – present)
- Utah Solid & Hazardous Waste Control Board - Appointed (2003 – present)
- American Council of Engineering Companies – Utah (ACEC-U) – President (2003 – present)

BREHM ENVIRONMENTAL LLC (BELLC) provides environmental consulting to the Public Works, Industrial, Transportation, Construction & Land Development marketplace. We deliver professional engineering support in the analysis and preparation of documentation for projects and facilities requiring environmental permitting, siting, clearances or other regulatory responses and actions. General areas of practice include Environmental Assessment & Documentation (ASTM, NEPA, NPDES, CWA, OPCA, RCRA, CERCLA and Wetlands); Construction Mitigation, Compliance & Observation; Remedial Strategies, Data Analysis & Closure. BELLC is a sole engineering practice, with Mr. Brehm, as Principal, providing all technical project delivery. The firm has completed over 40 projects since it was established in 2000. BELLC specializes in responsive, practical solutions to a wide range of project environmental challenges, including alternatives development, solid and hazardous waste facilities, soil and groundwater contaminant remedial planning and design, permitting, water quality assessment, and environmental clearances associated with NEPA and related agency programs. BELLC is particularly proud of its strong record of repeat client business, value, personal service and project performance.

Mr. Brehm's multi-disciplinary, multi-media background has given him the opportunity to handle a wide variety of projects in his career. In addition to his environmental engineering experience, Mr. Brehm has provided permitting and other environmental clearances and compliance support to a variety of public works and private sector development projects. This has included several projects on an accelerated schedule, including a large commercial "joint" development by a large local developer and the federal government. As evidence of this characteristic in his vitae, he supported each of the major service groups while at CH2M HILL (Environmental, Tele-communications, Transportation, and Water Resources). His current client list at **BREHM ENVIRONMENTAL LLC** reflects that same diversity.

Solid & Hazardous Waste Investigations, Facility Design and Management

Mr. Brehm's extensive experience in hazardous waste investigation and water resource engineering have included third-party quality assurance/quality control and construction management, sample collection, groundwater flow and transport, soil and groundwater remediation, solid and hazardous waste management, surface impoundment closure, landfill design and construction, and underground/aboveground storage tank management. Mr. Brehm has been the engineer-of-record for the design and permitting of several municipal landfills and expansions.

Since December of 2000, Mr. Brehm has been Salt Lake City Corporation's technical representative on all matters related to the City's participation in a voluntary removal action associated with a 100-year old drainage canal, in North Salt Lake City. The Northwest Oil Drain has been used by a variety of municipal, industrial and agricultural parties and their respective discharges, for decades. State and Federal agencies have partnered with the responsible parties since 1999, in order to avoid listing this facility as a CERCLA site. Public participation in the selected remedy, and construction phases, began in December 2002.

Mr. Brehm was a Project Manager for Operable Unit 1 (OU1) at Hill Air Force Base, Utah. OU1, which is one of nine operable units defined on-Base after Hill was placed on the CERCLA National Priorities List by the Environmental Protection Agency, consists of seven hazardous waste sites. The scope of the project included gathering data; technical evaluation of data; writing of reports, field investigations and studies; and data management and data formatting associated with the investigation, evaluation, and cleanup of the hazardous waste sites. Revised Interim Draft and Final Feasibility Study Reports were prepared, as well as a Proposed Plan and Record of Decision.

He served as Task Leader and Team Member on a $400,000 4-month remedial cost estimation project in support of a successful $50 million insurance cost recovery project for a regional utility.

He was Project Manager responsible for all actions related to hazardous wastes and restoration during the demolition and reconstruction of a petroleum marketing facility. He recommended and implemented a remedial action which minimized cost, avoided all impacts to the construction cost or schedule, and achieved regulatory closure prior to completion of the facility construction.

Mr. Brehm was the project manager and engineer-of-record for the planning, design, and third-party construction oversight of Pennsylvania's first hazardous waste landfill to meet the EPA's Minimum Technology Requirements. As project manager, Mr. Brehm had primary responsibility for the completion of all project tasks, including remote and onsite supervision of field staff, QA/QC and weekly contractor coordination meetings. Specific technical components included geosynthetics on 2H:1V slopes, 1x10-7 clay liner installation, F019 hazardous waste solidification, schedule and change order control. The project was a uniquely successful operation, and adopted by the Pennsylvania Department of Environmental Remediation as a technical workshop on facility construction.

Mr. Brehm was the Project Manager for the $250,000 hazardous waste assessment and characterization project associated with the reconstruction of more than 3,000 feet of industrial wastewater collection pipe and treatment plant at Hill Air Force Base, Utah. Sampling and analysis was being completed for the purpose of both opportunistic data gathering during the demolition, and hazardous waste generation documentation and action planning. The project was completed under budget, despite an independent construction contractor schedule which nearly tripled in length.

Mr. Brehm provided due diligence, environmental and construction compliance and permitting support services for the preparation and execution of the Olympic Winter Games of 2002, for the Salt Lake Organizing Committee, and their outside legal team. This project include the preparation of approximately 20 environmental assessment documents, 15 site planning documents (spill and hazardous material controls) and stormwater plans and permits for all non-competition venues. Challenges included an intrinsically critical-path intensive, security-sensitive, construction-driven project management structure, and air quality and safety issues related to dust control, fuel and fireworks handling and storage, among other items (2001 – 2002).

Additional qualifications for other services provided by BELLC, as well as references, are available upon request.

EXHIBIT B

TECHNICAL APPLICATION & DRAFT CLASS VI PERMIT #0303 REVIEW

Weber Construction and Demolition Debris Disposal Site
Warren Construction Services, Inc. (WCSI)
1650 West 3300 South – Weber County, Utah

December 30, 2003

Prepared for:

Holland & Hart LLP
60 East South Temple, Suite 2000
Salt Lake City, Utah 84111

Prepared by:
Michael D. Brehm, P.E., Principal
Utah License No. 167377-2202

BREHM ENVIRONMENTAL LLC
1335 EAST GILMER DRIVE - SALT LAKE CITY, UTAH 84105 / (801) 582-2310 / MBREHMPE@BREHMENVLLC.COM

Introduction

BREHM ENVIRONMENTAL, LLC (BELLC) has been engaged to perform a technical review of the application and permit related to the Weber Construction and Demolition Debris Disposal Site located near 1650 West 3300 South in Weber County, Utah. The purpose of this review is to provide and document an independent and objective evaluation of the completeness and technical accuracy of the applicants' proposal. Our review, to date, has been based on materials provided to BELLC by Holland & Hart LLP and other interested parties and agencies, with full citations provided in Attachment A. In addition, Michael D. Brehm, P.E. of BELLC inspected the proposed property from the unimpeded view and perspective of adjoining properties, on December 19, 2003.

We understand that the Utah Department of Environmental Quality and other government agencies have reviewed information provided to them in this regard, for the purpose of making determinations regarding the approval of the applicants' proposed facility. We also understand that interested third party agencies and individuals have expressed their concerns regarding the suitability of this site for the proposed use. In our opinion, these interested parties *and* the UDEQ should have complete and accurate information regarding a number of issues concerning public health, safety and the environment *before* final determinations are made regarding the approval of the proposed facility by regulatory and municipal authorities and agencies.

The following review comments identify material items contained in the application documentation that represent the need for more complete or more accurate information, before a technical review and approval by government agencies is appropriate. In addition, all review comments are provided in the context of their associated citations [*bracketed and in italicized font*].

General

1. The party(s) responsible for **preparing** the application and all supporting technical documentation – and their **qualifications** - is unclear. The inclusion of stamped/sealed engineering drawings in the Appendices is appropriate. However, there are other technical data and analyses presented that may or may not have been prepared, selected or their relevance considered, by a qualified professional. It would be appropriate to more fully identify (and credential) the preparer of this application, as the inference that a professional engineer prepared some (but perhaps not all) of the application may leave reviewers with an unwarranted sense of reliability. [*WCSI, 2003 – Part I, Item 9 and Appendices F, Q and S*]
2. There are several "factual" references or inferences made in the application that are **less than complete or** are altogether **inaccurate**, when considered with other information. One example is the reference to "filling a natural depression." I understand that native material has been removed from the site already, which is consistent with my own observations. Another is the reference that "trees.....restrict visibility," when in fact the site is almost entirely visible from adjoining properties on all sides. [*WCSI, 2003 – Section 1.4 and 2.1; Wright, 2003*]

Siting

3. Many landfill siting criteria – developed and administered by state and local agencies - are intended to assure compatibility with existing land uses, and safety, health and nuisance issues associated with those existing uses. Because of the proximity of the proposed site and landfill use to an airport and runway (~200 and ~500 feet, respectively), industrial park (10 feet), railroad crossing (~200 feet) and residential properties (~200 feet), the application's reliance on "getting a

zoning change" renders the application pragmatically premature and incomplete in this respect. While other agency "clearance" documents are provided, no evidence of **compatibility with local zoning or local government support** for this proposed use was provided. [*WCSI, 2003 – Sections 1.3.5, 1.4*]

4. Although the applicant provides information and a statement regarding compliance with Federal Aviation Administration (FAA) Circular 150/5200-33, the issue of "putrescible" waste deserves further clarification in the application and permit, particularly in light of the extreme close proximity (~ 500 feet) of the Ogden Municipal Airport, and the proximity of uniquely high concentrations of birdlife in and along the Great Salt Lake flyway – including gulls. The introduction of **putrescible-type waste** materials (such as job site food, yard waste and associated debris) into the typical construction-demolition waste stream is commonplace, and deserves specific avoidance measures and excluding language in this specific permit, at a minimum. Also, while other agency "clearance" documents are provided, no evidence of **FAA knowledge and support** for this proposed use was provided. As FAA compliance is associated with "non-exemptible" criteria under UDEQ rules, **prior** FAA endorsement would be prudent in this case. Also, inconsistent or incomplete references to allowable and proposed and excluded waste types should be clarified. [*WCSI, 2003 – Sections 2.9, 2.10, 6.1.5, 6.2 and Appendix P; UDEQ, 2002, Sections 302-1(2)(a)(v) and 302-1(3)*]
5. Although local and regional soil mapping is provided in the application, the identification of **on-site soil conditions and stability** is incomplete. Anecdotal information suggests that soil and organic (agricultural waste) material was historically imported to this site, which may not be suitable as stable base material. Further, the use of regional and vicinity soil information is not adequate to address this concern. [*WCSI, 2003 – Appendices C and I; UDEQ, 2002, Section 302-1(2)(b)(iii)(A-C); Wright, 2003*]
6. Although the application included basic information regarding the presence of surface and groundwater "rights" in the vicinity of the proposed facility, this information did not address UDEQ rules regarding the location of such facilities within "designated drinking water **source protection areas**" or "within a **distance to existing drinking water wells.**" The application does not address these distance criteria. For the record, at least one well is located approximately 4752 feet southeast of the proposed landfill, at the Ogden City Municipal Airport. [*WCSI, 2003 – Section 5.5.1 and Appendix J; UDEQ, 2002, Section 302-1(2)(e)(v)(A-C); Wright, 2003, Ogden, 2003*]
7. The application states that a "trailer park and **residential** neighborhood" are "some distance away." More complete and specific determinations of these distances are appropriate for both a complete permit review by UDEQ (rules require a **¼ mile setback**), and also for an appropriate consideration for a zoning change. Further, there are residential properties located ~ 200 feet northeast of the proposed facility, one of which is owned by a resident who has reportedly signed a petition opposing the proposed facility. [*WCSI, 2003 – Section 1.3.5; UDEQ, 2002, Section 302-1(2)(a)(iv)(A)*]
8. I observed the presence of a shallow, underground high-pressure gas line (Questar) crossing the northern portion of the property, during a recent field observation trip to the proposed site. The application did not include any mention of this significant feature, or any other utilities in the area, despite a reference to Appendix G for that purpose. Documentation of Questar's awareness and requirements for construction near such a **utility** would also be prudent. [*WCSI, 2003 – Section 4.2 and Appendix G*]
9. See review comment regarding **groundwater separation** provided below under **"Design / Operational."**
10. The application provides limited information suggesting that no **jurisdictional wetlands** are present, but does not contain other relevant information upon which the U.S. Army Corps

determination was made. The installation of a "groundwater drain" along the subject properties eastern boundary was reported to me. Because the natural soil and hydrologic conditions on the property have reportedly been altered even up to recent time periods – and I could not determine whether this information was available to the agent providing the determination - the determination documented in Appendix N may warrant further review. [*WCSI, 2003 – Section 6.1.3 and Appendix N; UDEQ, 2002, Section 302-1(2)(d); Wright, 2003; USFWS, 2003*]

Design / Operational

11. The identification of **cover sources** is incomplete. This reviewer could not determine an adequate correlation between availability (volume) or suitability (characteristics) of the proposed "sand and barrow (*sic*)," and projected cover needs, based on the information provided in the application. Anecdotal information suggests that soil and organic (agricultural waste) material was historically imported to this site, which may not be suitable for cover material. [*WCSI, 2003 – Section 6.5.1 and 7.2; Wright, 2003*]
12. The proximity of the final lowest waste cell elevation (4345 feet amsl) to the "**historical high level of ground water**" elevation is not adequately documented. This elevation should be shown, at a minimum, on the engineering drawings provided in the Appendices, and must indicate at least a 5 or 10 foot separation, depending upon final design. The soils and groundwater references cited in Appendix I are not adequate reliance regarding this important, site-specific criteria. Also of concern is anecdotal information suggesting that the depth to groundwater is currently less than five (5) feet below the grade of 33rd South. Piezometric data and historic analysis, obtained from the proposed site, is necessary to address this separation criteria, at a minimum. [*WCSI, 2003 – Section 5.3, 6.2 and Appendices F, I, Q and S; UDEQ, 2002, Section 302-1(2)(e)(i)(B)XXX*]
13. The proximity of a railroad crossing, and the traffic load and volume rating of 33rd South, should be evaluated and discussed in the application and operational plan relative to **traffic safety and design adequacy**. Again, prior awareness and support of local government agencies would provide some means to confirm the need for any transportation-related upgrades, in order to accommodate the proposed project.

Summary

In the opinion of this reviewer, the Weber Construction and Demolition Debris Disposal Site Class VI Permit Application contains incomplete and inaccurate information, precluding the ability of government agencies and other interested third parties to complete a reliable and adequate review of the suitability of the proposed site and its operational compliance. These deficiencies span a substantive range of technical elements, and **the majority of the deficiencies directly or indirectly relate to the suitability of the proposed site itself**, when considered in the context of existing and proximal uses and conditions. I understand the UDEQ and other select agencies have reached preliminary determinations that are generally favorable to the applicant's proposal. However, I believe that the deficiencies described above, indicate at a minimum that this application is incomplete and therefore flawed. Further, it appears that the site is not suitable for the proposed use, based on the information available in the application submitted.

BREHM ENVIRONMENTAL LLC
1335 EAST GILMER DRIVE - SALT LAKE CITY, UTAH 84105 / (801) 582-2310 / MBREHMPE@BREHMENVLLC.COM

ATTACHMENT A

REVIEWED MATERIALS

Ogden City Corporation. Unpublished drawing showing proximity of proposed landfill site to a groundwater well at the Ogden Municipal Airport, December 23, 2003, 1 p.

U.S. Fish & Wildlife Service (USFWS). National Wetland Inventory Mapping, December 29, 2003, 1 p.

Utah Department of Environmental Quality (UDEQ). Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements – R315-302, June 15, 2002, 10 p.

Utah Department of Environmental Quality (UDEQ). Utah Landfill Inventory, March 2003a, 8 p.

Utah Department of Environmental Quality (UDEQ). DRAFT SOLID WASTE PERMIT Weber Construction and Demolition Debris Disposal Site Permit # 0303, 2003b, 12 p.

Warren Construction Services, Inc., "Weber Construction and Demolition Debris Disposal Site – Landfill Permit Application, submitted August 12, 2003, 105 p.

Wright, Dan. Personal Communication with long-time occupant of an adjoining industrial/ commercial property (Rocky Mountain Masonry), December 19, 2003.

EXHIBIT C

[Archive Home][Date Prev][Date Next][Index]

Print this story E-mail this story TALK BACK

Supporters Hope Renovated Ogden-Hinckley Executive Airport Boosts Economy

November 30, 2003

Casper Star Tribune – Wyoming

Supporters Hope Renovated Ogden-Hinckley Executive Airport Boosts Economy

OGDEN, Utah (AP) - The Ogden-Hinckley Airport is undergoing a major overhaul, with the project's new terminal and two large hangar bays for corporate jets nearly completed.

The 80,000-square-foot facility is adjacent to a $12 million, 30-acre executive park now under construction that could attract hundreds or even thousands of high-paying jobs to Weber County, say the airport's business and government supporters.

"It's a superior aerospace building to anything ever built in Utah," said Bryce Gibby, marketing director for Kemp Development, Inc., the developer on the Skypark project.

Several other buildings, including a 100-bed hotel, a four-star restaurant and additional hangar facilities will soon be completed. They could help make Ogden-Hinckley stand out to potential corporate residents, Gibby said.

"Regional and corporate jet travel is the highway for Fortune 500 companies into our community," he said. "This is the first impression of Ogden they will get, so when executives come in on a $40 million jet and are considering moving their company to Ogden, we want them to feel like it's the type of community they can bring their business to."

Business facilities planned for the project include more corporate and regional jet storage space, facilities for overhaul and maintenance of jets, paint and interior services and completion and modification centers for upgrading existing aircraft or finishing new ones.

The Ogden aviation and aerospace businesses got a boost when lawmakers earlier this year passed a bill that allows partial rebates of state revenue to companies that locate and contribute to economic growth near airports.

Utah has been unable to compete with other states because until now it lacked an attractive incentive package for larger companies, Mark Renda, director of incentive funds for the Utah Department of Community and Economic Development said.

"We've been able to compete in offering incentives of up to several million through the Industrial Assistance Fund, but needed a tool that could bring large-scale projects that might exceed that amount," he said.

"This is a tool that could clearly be used at Ogden-Hinckley field in developing large-scale projects that create high-paying jobs and require significant investment in capital, for which the state might want to offer a larger

incentive."

Gibby said the bill adds substance to the quality-of-life, central western location and other pitches local officials and developers have often relied on to attract business. "A number" of companies are "very close" to reaching deals to locate at the airport, he said.

"There are still some better incentives back east, but they aren't located ideally to serve the western market," he said. "Now we're taken seriously when we meet with aerospace companies. Now we can discuss the bottom line."

Current CAA news channel:
Airport News

- Prev by Date: **We Don't Need Another Airport**
- Next by Date: **Victorville Leaders Tread Lightly on Land Near Airport**
- Index(es):
  - **Main**

EXHIBIT D

City Government

Mayor
City Council
City Attorney
Community & Economic Development
Community Services
Management Services
Police Department
Fire Department
Public Works
Boards and Committees

Visitors
Citizens
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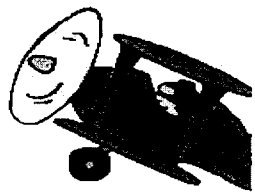
Format Page for Printing

Ogden-Hinckley Airport

3909 Airport Road
Ogden, Utah 84405



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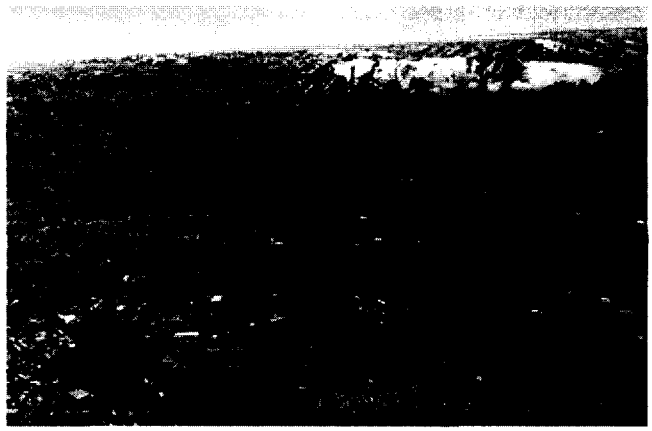
Airport Division Manager • Ed Rich
Administration • Leah Edgington
Maintenance • Lee Priest

Who we are...

Northern Utah's aviation entryway is Ogden-Hinckley Airport. We are located smack dab in the center of a bustling covey of forward moving Weber County towns and cities at "the top of Utah". Ogden-Hinckley Airport is Utah's busiest municipal airport with 100,000 operations logged in 2000. More than 285 General Aviation airplanes call the facility "home".



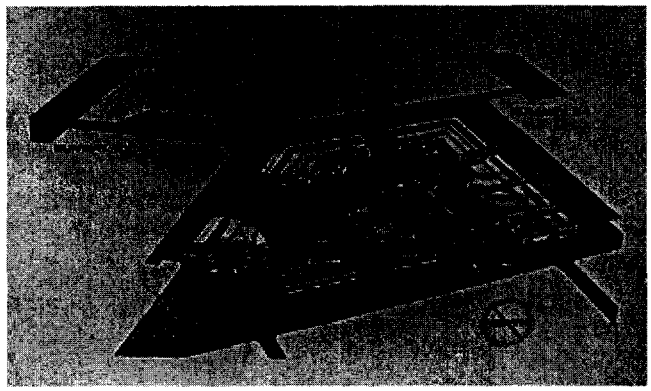
Located on 700-acres at the southwestern corner of Ogden, the airport maintains three runways, including Runway 3/21, of 8100 - foot length. In addition, an all-weather, 24-hour per day precision ILS approach capability gives the airport top credentials as an FAA Part 139 General Aviation airport, and a weather diversion alternative for Salt Lake City International Airport. DC-9s, MD-80s and B-737/727 class aircraft regularly use the airport for cargo and charter operations. Currently, there are no regularly scheduled passenger operations at the airport due to the close proximity to Salt Lake. Recent improvements to the terminal and approval of a Part 107 Security Plan have been accomplished to prepare the airport for scheduled operations as a "destination airport" and the "primary General Aviation airport" in

support of the Winter Olympics in 2002.

What we do...

Ogden-Hinckley also performs a vital role at relieving the pressure on facilities and limited airspace around Salt Lake City and has earned an international reputation as a pilot and maintenance (Embry-Riddle) training site. The open skies, an FAA contract control tower that operates daily from 7 a.m. to 8 p.m., full facilities supported by two Fixed Base Operators, and relative isolation in a good weather area make the airport a topnotch General Aviation location. The "Auger Inn" provides first class restaurant services to itinerants as well as local traffic. Budget Rent-a-Car is also located in the newly enhanced airport Terminal Building.

In addition, Ogden-Hinckley Airport, provides convenient access to the rapidly developing business, recreational, and manufacturing enterprises located in Northern Utah. As the aviation entryway to the region, hundreds of executive jet flights and other business aircraft are landing at the airport every year - and the number is growing. The ongoing conversion of former Defense Depot Ogden to Business Depot Ogden, an 1100-acre commercial boomtown with a potential of more than 10,000 new jobs is a typical initiative in the area that is enhanced by the availability of a large, all-weather, twenty-four hour airport within a few miles of the project. Three ski areas are within minutes of the airport, including Snowbasin, the site of the 2002 Olympic downhill events. The airport, "Means Business" and contributes more than $30 million to the regions economy every year.



A $12 million Skypark and Gateway Center is under development at the airport that will include a new executive terminal, 100-bed hotel, and a four star restaurant, as well as extensive executive aircraft hangar facilities. For more information, please contact Bryce Gibby, Project Manager & Marketing at (801) 732-8600, fax (801) 732-8602 or Dan Kemp, marketing at (801) 731-0615 or airportpro@aol.com.

For more information, including availability of hangar facilities, contact:

Ed Rich, Airport Manager
801-629-8251
801-627-8104 (Fax)
E-mail: edrich@ci.ogden.ut.us

- Great Western Jet Center (Ogden Air Service): **801-394-3400**
- Spectra Sonics Aviation (Ogden Jet Center): **801-392-7533**
- Embry-Riddle Aeronautical University: **801-392-9002**
- The Auger Inn **801-334-9790**
- Budget at the Airport: **801-334-7715**
- KW Aviation 399-9723
- Ogden Skydive 627-5867

2549 Washington Boulevard, Ogden, Utah 84401

EXHIBIT E

U.S. Department of Transportation

Federal Aviation Administration

Advisory Circular

Subject: CONSTRUCTION OR ESTABLISHMENT OF LANDFILLS NEAR PUBLIC AIRPORTS

Date: August 26, 2000 **AC No:** 150/5200-34

Initiated by: AAS-300 **Change:**

1. Purpose. This advisory circular (AC) contains guidance on complying with new Federal statutory requirements regarding the construction or establishment of landfills near public airports.

2. Application. The guidance contained in the AC is provided by the Federal Aviation Administration (FAA) for use by persons considering the construction or establishment of a municipal solid waste landfill (MSWLF) near a public airport. Guidance contained herein should be used to comply with recently enacted MSWLF site limitations contained in 49 U.S.C. § 44718(d), as amended by section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181 (April 5, 2000), "Structures interfering with air commerce." In accordance with § 44718(d), as amended, these site limitations are not applicable in the State of Alaska.

In addition, this AC provides guidance for a state aviation agency desiring to petition the FAA for an exemption from the requirements of § 44718(d), as amended.

3. Related Reading Materials.

a. AC - 150/5200-33, Hazardous Wildlife Attractions On or Near Airports, May 1, 1997.
b. Wildlife Strikes to Civil Aircraft in the United States 1990-1998, FAA Wildlife Aircraft Strike Database Serial Report Number 5, November 1998.
c. Report to Congress: Potential Hazards to Aircraft by Locating Waste Disposal Sites in the Vicinity of Airports, April 1996, DOT/FAA/AS/96-1.
d. Title 14, Code of Federal Regulation, Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers.
e. Title 40, Code of Federal Regulation, Part 258, Municipal Solid Waste Landfill Criteria.

Some of these documents and additional information on wildlife management, including guidance on landfills, are available on the FAA's Airports web site at www.faa.gov/arp/arphome.htm.

4. Definitions. Definitions for the specific purpose of this AC are found in Appendix 1.

5. Background. The FAA has the broad authority to regulate and develop civil aviation under the Federal Aviation Act of 1958, 49 U.S.C. § 40101, et. seq., and other Federal law. In section 1220 of the Federal Aviation Reauthorization Act of 1996, Pub. L. No. 104-264 (October 9, 1996), the Congress added a new provision, section (d), to 49 U.S.C. § 44718 to be enforced by the FAA and placing limitations on the construction or establishment of landfills near public airports for the purposes of enhancing aviation safety. Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. No. 106-181 (April 5, 2000) has replaced section 1220 of the 1996 Reauthorization Act, 49 U.S.C. § 44718 (d), with new language. Specifically, the new provision, § 44718(d), as amended, was enacted to further limit the construction or establishment of a MSWLF near certain smaller public airports.

In enacting this legislation, Congress expressed concern that a MSWLF sited near an airport poses a potential hazard to aircraft operations because such a waste facility attracts birds. Statistics support the fact that bird strikes pose a real danger to aircraft. An estimated 87 percent of the collisions between wildlife and civil aircraft occurred on or near airports when aircraft are below 2,000 feet above ground level (AGL). Collisions with wildlife at these altitudes are especially dangerous as aircraft pilots have minimal time to recover from such emergencies.

Databases managed by FAA and the United States Air Force show that more than 54,000 civil and military aircraft sustained reported strikes with wildlife from 1990 to 1999 (28,150 civil strikes and 25,853 military strikes). Between 1990-1999, aircraft-wildlife strikes involving U. S. civil aircraft result in over $350 million/year worth of aircraft damage and associated losses and over 460,000 hours/year of aircraft down time.

From 1990 to 1999, waterfowl, gulls and raptors were involved in 77% of the 2,119 reported damaging aircraft-wildlife strikes where the bird was identified. Populations of Canada geese and many species of gulls and raptors have increased markedly over the last several years. Further, gulls and Canada geese have adapted to urban and suburban environments and, along with raptors and turkey vultures, are commonly found feeding or loafing on or near landfills.

In light of increasing bird populations and aircraft operations, the FAA believes locating landfills in proximity to airports increases the risk of collisions between birds and aircraft. To address this concern, the FAA issued AC 150/5200-33, *Hazardous Wildlife Attractions On or Near Airports*, to provide airport operators and aviation planners with guidance on minimizing wildlife attractant. AC 150/5200-33 recommends against locating municipal solid waste landfills within five statute miles of an airport if the landfill may cause hazardous wildlife to move into or through the airport's approach or departure airspace.

6. General. Using guidance provided in the following sections, persons considering construction or establishment of a landfill should first determine if the proposed facility meets the definition of a new MSWLF (see Appendix 1). Section 44718(d), as amended, applies only to a new MSWLF. It does not apply to the expansion or modification of an existing MSWLF, and does not apply in the State of Alaska. If the proposed landfill meets the definition of a new MSWLF, its proximity to certain public airports (meeting the criteria specified in Paragraph 8 below) should be determined. If it is determined that a new MSWLF would be located within six miles of such a public airport, then either the MSWLF should be planned for an alternate location more than 6 miles from the airport, or the MSWLF proponent should request the appropriate State aviation agency to file a petition for an exemption from the statutory restriction.

In addition to the requirements of § 44718(d), existing landfill restrictions contained in AC 150/5200-33, *Hazardous Wildlife Attractions On or Near Airports* (see Paragraph 5, Background) also may be applicable. Airport operators that have accepted Federal funds have obligations under Federal grant assurances to operate their facilities in safe manner and must comply with standards prescribed in advisory circulars, including landfill site limitations contained in AC 150/5200-33.

7. Landfills Covered by the Statute. The limitations of § 44718(d), as amended, only apply to a new MSWLF (constructed or established after April 5, 2000). The statutory limitations are not applicable where construction or establishment of a MSWLF began on or before April 5, 2000, or to an existing MSWLF (received putrescible waste on or before April 5, 2000). Further, an existing MSWLF that is expanded or modified after April 5, 2000, would not be held to the limitations of § 44718(d), as amended.

8. Airports Covered by the Statute. The statutory limitations restricting the location of a new MSWLF near an airport apply to only those airports that are recipients of Federal grants (under the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*) and to those that primarily serve general aviation aircraft and scheduled air carrier operations using aircraft with less than 60 passenger seats.

While the FAA does not classify airports precisely in this manner, the FAA does categorize airports by the type of aircraft operations served and number of annual passenger enplanements. In particular, the FAA categorizes public airports that serve air carrier operations. These airports are known as commercial service airports, and receive scheduled passenger service and have 2,500 or more enplaned passengers per year.

One sub-category of commercial service airports, nonhub primary airports, closely matches the statute requirement. Nonhub primary airports are defined as commercial service airports that enplane less than 0.05 percent of all commercial passenger enplanements (0.05 percent equated to 328,344 enplanements in 1998) but more than 10,000 annual enplanements. While these enplanements consist of both large and small air carrier operations, most are conducted in aircraft with less than 60 seats. These airports also are heavily used by general aviation aircraft, with an average of 81 based aircraft per nonhub primary airport.

In addition, the FAA categorizes airports that enplane 2,500 to 10,000 passengers annually as non-primary commercial service airports, and those airports that enplane 2,500 or less passengers annually as general aviation airports. Both types of airports are mainly used by general aviation but in some instances, they have annual enplanements that consist of scheduled air carrier operations conducted in aircraft with less than 60 seats. Of the non-primary commercial service airports and general aviation airports, only those that have scheduled air carrier operations conducted in aircraft with less than 60 seats would be covered by the statute. The statute does not apply to those airports that serve only general aviation aircraft operations.

To comply with the intent of the statute, the FAA has identified those airports classified as nonhub primary, non-primary commercial service and general aviation airports that:

1. Are recipients of Federal grant under 49 U.S.C. § 47101, et. seq.;
2. Are under control of a public agency;
3. Serve some scheduled air carrier operations conducted in aircraft with less than 60 seats; and
4. Have total annual enplanements consisting of at least 51% of scheduled air carrier enplanements conducted in aircraft with less than 60 passenger seats.

Persons considering construction or establishment of a new MSWLF should contact the FAA to determine if an airport within six statute miles of the new MSWLF meets these criteria (see paragraph 11 below for information on contacting the FAA). If the FAA determines the airport does meet these criteria, then § 44718(d), as amended, is applicable.

An in-depth explanation of how the FAA collects and categorizes airport data is available in the FAA's National Plan of Integrated Airport Systems (NPIAS). This report and a list of airports classified as nonhub primary, non-primary commercial service and general aviation airports (and associated enplanement data) are available on the FAA's Airports web site at http://www.faa.gov/arp/410home.htm.

9. Separation distance measurements. Section 44718(d), as amended, requires a minimum separation distance of six statute miles between a new MSWLF and a public airport. In determining this distance separation, measurements should be made from the closest point of the airport property boundary to the closest point of the MSWLF property boundary. Measurements can be made from a perimeter fence if the fence is co-located, or within close proximity to, property boundaries. It is the responsibility of the new MSWLF proponent to determine the separation distance.

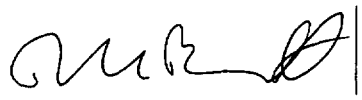
10. Exemption Process. Under § 44718(d), as amended, the FAA Administrator may approve an exemption from the statute's landfill location limitations. Section 44718(d), as amended, permits the aviation agency of the state in which the airport is located to request such an exemption from the FAA Administrator. Any person desiring

such an exemption should contact the aviation agency in the state in which the affected airport is located. A list of state aviation agencies and contact information is available at the National Association of State Aviation Officials (NASAO) web site at www.nasao.org or by calling NASAO at (301) 588-1286.

A state aviation agency that desires to petition the FAA for an exemption should notify the Regional Airports Division Manager, in writing, at least 60 days prior to the establishment or construction of a MSWLF. The petition should explain the nature and extent of relief sought, and contain information, documentation, views, or arguments that demonstrate that an exemption from the statute would not have an adverse impact on aviation safety. Information on contacting FAA Regional Airports Division Managers can be found on the FAA's web site at www.faa.gov.

After considering all relevant material presented, the Regional Airports Division Manager will notify the state agency within 30 days whether the request for exemption has been approved or denied. The FAA may approve a request for an exemption if it is determined that such an exemption would have no adverse impact on aviation safety.

11. Information. For further information, please contact the FAA's Office of Airport Safety and Standards, Airport Safety and Certification Branch, at (800) 842-8736, Ext. 73085 or via email at WebmasterARP@faa.gov. Any information, documents and reports that are available on the FAA web site also can be obtained by calling the toll-free telephone number listed above.



DAVID L. BENNETT
Director, Office of Airport Safety and Standards

APPENDIX 1. DEFINITIONS.

The following are definitions for the specific purpose of this advisory circular.

a. Construct a municipal solid waste landfill means excavate or grade land, or raise structures, to prepare a municipal solid waste landfill as permitted by the appropriate regulatory or permitting authority.

b. Establish a municipal solid waste landfill (MSWLF) means receive the first load of putrescible waste on site for placement in a prepared municipal solid waste landfill.

c. Existing municipal solid waste landfill (MSWLF) means a municipal solid waste landfill that received putrescible waste on or before April 5, 2000.

d. General aviation aircraft means any civil aviation aircraft not operating under 14 C.F.R. Part 119, Certification: Air carriers and commercial operators.

e. Municipal solid waste landfill (MSWLF) means publicly or privately owned discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste, as defined under 40 C.F.R. § 258.2. A MSWLF may consist of either a standalone unit or several cells that receive household waste.

f. New municipal solid waste landfill (MSWLF) means a municipal solid waste landfill that was established or constructed after April 5, 2000.

g. Person(s) means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them (14 C.F.R. Part 1).

h. Public agency means a State or political subdivision of a State; a tax-supported organization; or an Indian tribe or pueblo (49 U.S.C. § 47102(15)).

i. Public airport means an airport used or intended to be used for public purposes that is under the control of a public agency; and of which the area used or intended to be used for landing, taking off, or surface maneuvering of aircraft is publicly owned (49 U.S.C. § 47102(16)).

j. Putrescible waste means solid waste which contains organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds (40 C.F.R. § 257.3-8).

k. Scheduled air carrier operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for

which the air carrier, commercial operator, or their representatives offers in advance the departure location, departure time, and arrival location. It does not include any operation that is conducted as a supplemental operation under 14 C.F.R. Part 119, or is conducted as a public charter operation under 14 C.F.R. Part 380 (14 C.F.R. § 119.3).

l. Solid waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (40 C.F.R. § 258.2).